IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE S.ANANDA REDDY
WRIT PETITION NO : 4539 of 1997

Between:
Masnaji Rao, alias Masna, S/o. Ullaji Rao,
R/o. Near Railway Over-Bridge, Nizamabad.

..... PETITIONER

AND

1 The Managing Director, A.P.S.R.T.C.,
Mushirabad, Hyderabad-20.
2 The Depot Manager, A.P.S.R.T.C.,
Bus Depot, Nizamabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records from the 2nd respondent in respect of proceedings No. 01/83(13)/93-NZB dated 11-10-1994and issue order or direction on one in the nature of Writ of Mandamus declaring the impugned action of the 2nd respondent in reducing the pay of the petitioner by one incremental stage for a period of one year, which will have its effect on his future increments, as illegal, unjust, arbitrary and in violation of Principles of natural justice and also Violative of Articles 14, 16 and 21 of the Constitution of India; and consequently direct the 2nd respondent to restore the increments of the petitioner along with all consequential benefits;

Counsel for the Petitioner:MR.V.NARASIMHA GOUD

Counsel for the Respondents : MR.V.T.M.PRASAD (SC FOR A.P.S.R.T.C.)

The Court made the following O R D E R:

This writ petition is filed by the petitioner aggrieved by the orders passed by the second respondent dated 11-10-1994, under which, the scale of pay of the petitioner was reduced by one incremental stage for a period of one year, which shall have its effect on the future increments.

According to the petitioner, he was absorbed as a Booking Clerk on 20-11-1978 as a result of Nationalisation of private route. Disciplinary proceedings were initiated against the petitioner on certain alleged charges, for which a show cause notice was issued to the petitioner and the petitioner submitted his explanation. Rejecting the said explanation, the second respondent imposed punishment of reducing the scale of pay of the petitioner by one incremental stage, which will have effect on future increments, that in effect amounts to stoppage of one increment with cumulative effect. Though the petitioner filed appeal and revision, both were rejected confirming the order passed by the second respondent. Therefore, the petitioner has come up with the present writ petition.

Learned counsel for the petitioner contended that the impugned order passed by the second respondent and confirmation of the same by the appellate and revisional authorities is contrary to the Regulations as well as violation of principles of natural justice. He further contended that the imposition of withholding of one increment cumulatively amounts to major punishment and it should be imposed only after conducing necessary enquiry by giving opportunity to the petitioner to explain his stand and as no such enquiry was conducted by the second respondent, who passed the original impugned order imposing the punishment, the same is liable to be set aside. He also relied upon the APSRTC (Classification, Control and Appeal) Regulations, 1967, especially Regulations 8 and 12 and contended that as per Regulation 12(2), no order imposing, on any employee, any of the penalties

specified in items (vii), (viii) and (ix) of Regulation 8(1) shall be imposed except after an enquiry. Learned counsel also referred to clause (vii) of Regulation 8(1), which shows reduction to a lower rank in seniority list or to a lower post in time-scale whether in the same class of service or in another class, or to a lower stage in a time-scale. He contended that withholding of increment with cumulative effect would amounts to reduction in the time-scale and relied upon the judgment of the Apex Court reported in ***Kulwant Singh Gill v.State of Punjab***[1], wherein the Apex Court while considering almost similar provisions, held that withholding of increments with cumulative effect would amounts to a major punishment, falling in the category of reduction to a lower stage in the time-scale of the pay, and the same cannot be imposed without conducting an enquiry. Therefore, learned counsel contended that the impugned order is liable to be set aside on the ground that the Corporation has imposed the punishment, without conducting an enquiry as contemplated under Regulation 12(2).

Though, no counter has been filed, learned Standing Counsel for APSRTC, sought to sustain the order stating that the punishment imposed was only withholding of one increment simpliciter, which falls under clause (iv) of Regulation 8(1), therefore, there was no need to conduct any enquiry as contemplated under Regulation 12(2) and sought to dismiss the writ petition.

Heard learned counsel for the parties and considered the material available on record.

A perusal of the impugned order passed by the second respondent shows that the penalty imposed on the petitioner was that of reducing his pay by one incremental stage for a period of one year, which shall have its effect on his future increments, which amounts to withholding of one increment cumulatively and the said punishment would fall within clause (vii) of Regulation 8(1). Before imposing such a

punishment, the Corporation is obligated to conduct enquiry as contemplated under Regulation 12(2). As no such enquiry was conducted, the impugned order dated 11-10-1994 as confirmed by the appellate authority vide orders dated 10-05-1996 and reviewing authority vide orders dated 12-02-1997 is hereby set aside. The increment withheld in pursuance of the impugned order shall be restored within a period of six weeks from the date of receipt of a copy of this order and the difference of pay, if any, payable shall be paid within a period of four weeks thereafter.

The writ petition is accordingly allowed. However, this order does not preclude the respondent-Corporation from conducting an enquiry against the alleged misconduct of the petitioner, if it so chooses. No order as to costs.

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21-09-2004

vrn

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Tuesday, the Twenty First Day of September, Two Thousand and Four.

To
1 The Managing Director, A.P.S.R.T.C.,
Mushirabad, Hyderabad-20.
2 The Depot Manager, A.P.S.R.T.C.,
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3 Two C.D copies

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[1] 1990(6)SLR